

DRAFT

# **ERIE COUNTY CDBG SECTION 3 PLAN**

FOR  
COUNTY OF ERIE  
AND  
COUNTY OF ERIE "ON BEHALF OF"  
EDINBORO BOROUGH  
GIRARD TOWNSHIP  
MCKEAN TOWNSHIP  
NORTH EAST BOROUGH

Administered by  
Erie County Department of Planning  
Erie County Courthouse  
140 West 6<sup>th</sup> Street  
Erie, PA 16501

Adopted by Erie County Council on \_\_\_\_\_, 2014

**TABLE OF CONTENTS**  
(ERIE COUNTY CDBG SECTION 3 PLAN)

<b>SECTION</b>
I. POLICY STATEMENT
II. RESPONSIBLE ENTITY
III. APPLICABILITY THRESHOLDS
IV. DEFINITIONS
V. RESPONSIBILITIES / PROCEDURES
VI. OTHER
EXHIBITS
A. Invitation for Bids Notice
B. Request for Proposals Notice
C. Section 3 Contact Solicitation and Commitment Statement
D. Section 3 Work Force Needs Table – Employees
E. HUD Section 3 Business Registry
F. Prime Contractor’s Section 3 Report
G. Section 3 Summary Report

# ERIE COUNTY CDBG SECTION 3 PLAN

## I. POLICY STATEMENT

The County of Erie, as a CDBG recipient, is required to comply with applicable provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR Part 135).

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by CDBG financial assistance shall, to the *greatest extent feasible*, and consistent with existing Federal, State and local laws and regulations, be directed to low and very-low income persons, particularly residents of government assisted housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

To facilitate this policy, the County of Erie has developed and adopted this Section 3 Plan. This Plan supersedes all other Section 3 Plans which may have been adopted by the County of Erie.

## II. RESPONSIBLE ENTITY

The Erie County Department of Planning will be the responsible entity for the implementation and administration of the CDBG Section 3 Plan. Please direct any questions you may have regarding this plan to the CDBG Administrator at (814) 451-6016.

## III. APPLICABILITY THRESHOLDS

**Recipient Thresholds** – Section 3 applies to recipients of CDBG assistance for which the amount of assistance exceeds \$200,000. Erie County is the recipient of CDBG funds in excess of \$200,000 per year from the PA Department of Community of Community and Economic Development (PA DCED).

**Contractor and Subcontractor Thresholds** – Section 3 applies to contractors and subcontractors for which the amount of assistance to a recipient (Erie County) exceeds \$200,000 *and* the contract or subcontract exceeds \$100,000. The latter amount could include grant monies and/or other funds the sum of which is \$100,000 or more. If the amount of assistance exceeds \$200,000, but no contracts exceed \$100,000, the Section 3 preference requirements apply only to the recipient (Erie County).

## IV. DEFINITIONS

For the purpose of these requirements, the following terms, as defined below, shall apply:

- A. **SECTION 3 RECIPIENT** – A recipient is any entity which receives Section 3 covered assistance, directly from HUD or from another recipient (i.e. a PHA; unit of State (i.e. DCED) or local government; property owner; developer, etc.). Erie County is considered a Section 3 recipient.
- B. **SECTION 3 COVERED PROJECT** – A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage and water line repair or installation, updates to building facades, etc.
- C. **SERVICE AREA** - means the geographical area in which the persons benefiting from the Section 3 covered project reside. The service area shall not extend beyond the limits of Erie County.

D. **SECTION 3 RESIDENT** is:

- A public housing resident; or
- A low or very low income person residing in Erie County where the Section 3 covered assistance (CDBG funded project) is expended.
  - ✓ low-income refers to families (including single persons) whose incomes do not exceed 80 percent of the median income for the area;
  - ✓ very low-income refers to families (including single persons) whose incomes do not exceed 50 percent of the median income for the area.

Low and very low income limits are determined annually by HUD and may be obtained at: <http://www.huduser.org/portal/datasets/il.html>

E. **SECTION 3 BUSINESS CONCERN** - is a business that can provide evidence that it meets one of the following criteria:

- 51 percent or more owned by Section 3 residents; or
  - At least 30 percent of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within 3 years of the date of first hire\* *Example: Mary was an unemployed Section 3 resident that was first hired by ABC Company on January 1, 2011. She received a raise of \$2,500 in March 2012, thereby boosting her household income above the local low income level. ABC Company may continue to count Alysha as one of their Section 3 employees until December 31, 2013 (i.e. within three years of the date of first hire).*
- or
- Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to business concerns that meet one of the first two qualifications above.

Note Section 3 is both race and gender neutral. The preferences provided by Section 3 are based on income-level and location. A minority and/or woman owned business enterprise must provide evidence that it meets at least one criterion of a Section 3 business outlined above in order to receive preference under Section 3.

F. **HOUSING AND COMMUNITY DEVELOPMENT ASSISTANCE** - means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

G. **EMPLOYMENT OPPORTUNITIES GENERATED BY SECTION 3 COVERED ASSISTANCE** – for housing and community development programs, this term means all employment opportunities arising in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards); housing construction, or “other” public construction which includes infrastructure work such as extending water and sewer lines, sidewalk repairs, site preparation, installing conduits for utility services, etc. The term also refers to management and administrative jobs, technical, professional, building trades and non-construction jobs at all levels.

H. **“TO THE GREATEST EXTENT FEASIBLE”** – Recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. For instance, this may mean going a step beyond normal notification procedures for employment and contracting procedures for employment and contracting procedures by developing strategies that will specifically target Section 3 residents and businesses for these types of economic opportunities.

- I. **CONTRACTOR** - means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.
- J. **SUBCONTRACTOR** – any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.
- K. **NEW HIRE** – a full time employee for a new permanent, temporary, or seasonal position that is created as a direct result of the expenditure of Section 3 covered financial assistance. Note: laid off workers that are re-hired as a result of a CDBG funded project can be considered a "new hire".
- L. **SECTION 3 CLAUSE** – the contract provisions set forth in Section 135.38 and identified below:
  - 1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - 2. The parties to the contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
  - 3. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the said labor organization or workers' representative of Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places available at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability or apprenticeship and training position, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.
  - 4. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
  - 5. The Contractor will certify that any vacant employment positions including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
  - 6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

## V. RESPONSIBILITIES / PROCEDURES

In an effort to meet its Section 3 responsibilities, the County intends to implement the following procedures:

**1. The County will ensure contractor and subcontractor awareness of Section 3 goals and responsibilities. This will be achieved by:**

**A. Invitation for Bids notice will include the following statement:**

“The project is being undertaken with CDBG funds from the PA Department of Community and Economic Development (DCED). Attention of the bidder is called to the Federal and State civil rights and equal opportunity requirements; Erie County Minority/Women Business Enterprise (MBE/WBE) *and Section 3 Compliance requirements*, all as set forth in the Contract Documents. Attention of the bidder is also called to the requirement to pay Davis Bacon Wage Rates and comply with applicable labor standards provisions”. (See Exhibit A)

**B. Request for Proposals notices will include the following statement:**

“Proposals will be reviewed and ranked by a committee made up of representatives using the following criteria: Qualifications and Experience; Approach to Scope of Work, Overall Quality and Clarity of Proposal; MWBE *and Section 3 Business Concerns Utilization*”; and Total Project Cost. (See Exhibit B)

**C. A copy of the Invitation for Bids notice *or* Request for Proposals notice will be mailed to certified Section 3 Business Concerns.**

**D. The names of bidders requesting bid documents or proposers requesting a RFP packet will be made available to Section 3 Business Concerns and Section 3 residents *upon request* for possible subcontracting opportunities.**

**E. Bidders will be required to complete the following forms and submit them concurrently with their bid proposals. These forms will be included in Section II–(Bid Forms) of the County’s CDBG Contract/Bid Documents:**

- **Section 3 Contact Solicitation and Commitment Statement** (See Exhibit C)
- **Section 3 Work Force Needs Table – Employees** (See Exhibit D)

**F. The “Erie County Section 3 Requirements” will be made part of Section V – General Conditions (Part II-E) of the County’s CDBG Contract/Bid Documents.**

**G. The County’s CDBG Contract/ Bid Document for construction projects and the Request for Proposals packets for professional services will contain a list of certified Section Business 3 Concerns to be used in soliciting bids/quotes for materials and services.**

As of the adoption of this plan, HUD has established a Section 3 Business Registry listing those firms which have self-certified that they meet one of the regulatory definitions of a Section 3 Business. The list is available at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome> . (See Exhibit E)

Unless otherwise noted, the County will only accept /provide preference to Section 3 Businesses which have registered with HUD. To search the database for self-certified Section 3 businesses, register your business for inclusion, or for more information on the Business Registry, please visit <http://www.hud.gov/Sec3Biz> .

- H. The Section 3 requirements will be brought to the attention of the contractor at preconstruction meetings.
- I. At the conclusion of a construction project the contractor will be required to submit to the ECDP Project Completion Report Forms including the **Prime Contractor's Section 3 Report**. (See Exhibit F)
- J. Every applicant, recipient, contracting party, contractor and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the **SECTION 3 CLAUSE** which can be found in the "Definitions" section of this document.

**2. For CDBG funded *construction projects* the County of Erie has established "Minimum Levels of Participation" (MLP) for the *Employment of Section 3 Residents* and for the *Utilization of Section 3 Business Concerns* for each project in each bid category to be used solely as a guide in determining bidder responsibility.**

The "Minimum Levels of Participation" apply to contractors for which the amount of the construction contract exceeds \$100,000. If the contractor *has the need to hire new persons* to complete the Section 3 covered contract *or needs to subcontract portions of the work to another business*, they are encouraged to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns.

- The MLP for employment of Section 3 Residents is 30% of the aggregate of new hires in any fiscal year (*i.e., 3 out of 10 new employees needed to complete a Section 3 covered project/activity would need to be Section 3 residents*)

Acceptable documentation to determine eligibility as a Section 3 resident may include the following:

- Proof of residency in a public housing development.
- Evidence of participation in a HUD Youth build program if operated in Erie County.
- Evidence that the individual resides in the Section 3 area and is a low or very low-income person, as determined by local HUD income limits.

- The MLP for contracting or utilizing Section 3 Business Concerns is 10% of total amount of the project contract.

Acceptable documentation to determine eligibility as a Section 3 Business may include the following:

- Unless otherwise noted, the County will only accept /provide preference to Section 3 Businesses which have registered with HUD. To search the database for self-certified Section 3 businesses, register your business for inclusion, or for more information on the Business Registry, please visit <http://www.hud.gov/Sec3Biz>.

**3. For contracts awarded for *Professional Services (non-construction projects)* for engineering and/or consulting work under the Request for Proposal (RFP) method, the County of Erie has established "Minimum Levels of Participation" (MLP) for the *Utilization of Section 3 Business Concerns* and also will identify evaluation factors (and their relative importance) in the RFP package to be used in rating the proposals.**

- The MLP for contracting or utilizing Section 3 Business Concerns is 3% of total amount of the Professional Services contract.

- An evaluation factor will include preference for Section 3 Business Concerns and the acceptability of the strategy for meeting the Section 3 “greatest extent feasible” requirement. The County will assign up to 10 points on a 100 point grading system for use of Section 3 Business Concerns by the prime proposer.
  - Unless otherwise noted, the County will only accept /provide preference to Section 3 Businesses which have registered with HUD. To search the database for self-certified Section 3 businesses, register your business for inclusion, or for more information on the Business Registry, please visit <http://www.hud.gov/Sec3Biz>.
  - In all respects, Contract award shall be made to the responsible firm (either Section 3 or Non-Section 3 Business Concern) whose proposal is determined most advantageous to the County, considering price and all other factors specified in the RFP.

**4. The County shall submit an annual Section 3 Summary Report to the PA DCED which demonstrates efforts taken to comply with Section 3 requirements. The report is for the period January 1 – December 31 and will be emailed to [ra-dcSection3@pa.gov](mailto:ra-dcSection3@pa.gov) by the 3<sup>rd</sup> Monday in January.** (See Exhibit G)

## **V. OTHER**

As a Section 3 recipient the County is not required to create jobs or contracts for Section 3 residents and Section 3 Business Concerns simply for the sake of creating them. Section 3 requires that when employment or contracting opportunities are generated because a project or activity necessitates the employment of additional personnel through individual hiring or the awarding of contracts, the recipient (Erie County) will to the greatest extent feasible encourage the hiring of low and very low income persons and/or businesses that are owned by these persons or that substantially employ them.

Section 3 is not an entitlement program, there are no guarantees. Residents and businesses must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.



**EXHIBITS  
TO  
ERIE COUNTY  
CDBG SECTION 3 PLAN**